

DRAFT PUBLIC ADMINISTRATION¹ MANAGEMENT BILL

Only for distribution within government

Footnotes are explanatory notes, queries, etc and will be removed before the Bill is introduced in Parliament.

To provide for administration in all three spheres of government to be organised and to operate in ways that ensure efficient, quality, collaborative and accountable service delivery to promote social and economic development for the people of the Republic; and for matters connected therewith.

PREAMBLE

RECOGNISING THAT—

- the Constitution provides that the Republic is one, sovereign, democratic state and that the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated;
- the Constitution requires all spheres of government to provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realisation of their constitutional rights;
- one of the most pervasive challenges facing our country as a developmental state is the need for government to redress poverty, underdevelopment, marginalisation of people and communities and other legacies of apartheid and discrimination; and

¹ **Opinion requested:** Term “public administration”, instead of term “public service”, is used throughout the Bill in view of an interpretation of Chapter 10 of the Constitution which appears to limit the scope of the term “public service” to national and provincial governments, i.e. excluding local government, and similarly also the jurisdiction of the Public Service Commission (s196 of the Constitution). See the use of term “public administration” in s195 of the Constitution as oppose to use of term “public service” in s197 thereof. If the term “public service” is to be construed to include local government, why special provision for provincial government in s197(4) and not for local government as well? An opinion is sought on whether the term “public service” as used in s196 and s197 of the Constitution includes local government and therefore also whether the scope of the Public Service Commission includes local government too. If the opinion is that the term “public service” in the Constitution excludes municipalities, a further opinion is sought on whether the term “public service” could be defined in this Bill to include “municipalities” despite its meaning for purposes of the Constitution. Alternatively, an opinion is also sought on whether the term “Public Administration” could be used in the Bill to include administrations in three spheres only and not all the organs of state envisaged in section 195(2), which seems to be the meaning of the term “Public Administration” in the Constitution.

- this challenge is best addressed through a concerted effort by government in all spheres to work together and to integrate as far as possible their actions in the provision of services, the alleviation of poverty and the development of the people and the country;

AND BEARING IN MIND THAT—

- administration in every sphere of government is governed by the values and principles governing public administration in section 195 of the Constitution;
- the Constitution permits that legislation regulating public administration differentiate between different sectors, administrations or institutions through taking into account their nature and functions;
- any matter concerning local government not dealt with in the Constitution may, in terms of section 164, be prescribed by national legislation or by provincial legislation within the framework of national legislation; and
- as required by section 41(2) of the Constitution, the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), was enacted to establish or provide for structures and institutions to promote and facilitate intergovernmental relations and to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes;

AND IN ORDER TO—

- provide for administration in all three spheres of government to be organised and to operate in ways that ensure efficient, quality, collaborative and accountable service delivery to promote social and economic development for the people of the Republic;
- enhance service delivery through flexible structures that enable and promote operational and front-line integration, innovation by means of amongst others electronic government, human capital and talent management, managerial accountability, performance and people-orientated service culture;
- further enhance service delivery through systematic information and knowledge management and collaboration between institutions within and across spheres of government as well as between those spheres and private and development sectors,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1 INTERPRETATION, SCOPE AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context otherwise indicates—

“**code of conduct**” means the code of conduct envisaged in section 41(1)(b)(vi);

“**collective agreement**” means a collective agreement referred to in section 8(1);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**department**” means a national department, the Office of a Premier or a provincial department;

“**educator**” means an educator as defined in section 1 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

“**electronic government**” means the use of information and communication technologies in the Public Administration to improve services delivery and internal functioning;

“**employee**” means a person appointed in terms of section 15(1), 16(1), 17(1), 18(1) or (2) or 22(1), but excludes a person appointed as a special adviser in terms of section 15(2);

“**employer**”, in relation to an employee, means the functionary referred to in section 21;

“**employment practice**”, includes, but is not limited to—

- (a) recruitment procedures, advertising and selection criteria;
- (b) appointment and the appointment process;
- (c) job and occupational classification and grading;
- (d) remuneration and other conditions of service;
- (e) job assignments;
- (f) the working environment;
- (g) work facilities;
- (h) capacity building, training and development;
- (i) performance management systems and practices;
- (j) transfer and secondment;
- (k) discipline;
- (l) management of poor performance and ill health;
- (m) termination of employment;

“establishment” means the posts which have been created for the normal and regular requirements of a public administration institution;

“executive authority”, in relation to—

- (a) The Presidency or a national government agency within the President’s portfolio, means the President;
- (b) a department or national government agency within a Cabinet portfolio, means the Minister responsible for such portfolio;
- (c) the Office of the Commission, means the Chairperson of the Commission;
- (d) the Office of a Premier or a provincial government agency within a Premier’s portfolio, means the Premier of that province;
- (e) a provincial department or a provincial government agency within an Executive Council portfolio, means the member of such Executive Council responsible for such portfolio;
- (f) a municipality or municipal government agency of that municipality, means the Municipal Council of that municipality;

“government agency” means a national, provincial or municipal government agency;

“gratification” means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

“head of department” means the incumbent of a post mentioned in column 2 of Schedule 1 and includes any employee acting in such post;

“head” means a head of department, a municipal manager or a head of government agency and includes any employee acting in such post;

“head of government agency” means the incumbent of a post mentioned in column 2 of Schedule 2 and includes any employee acting in such post;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“legislature” means Parliament, a provincial legislature or a municipal council;

“MEC” means the Member of the Executive Council of a province responsible for local government;

“member of the Intelligence Services” means a member of the National Intelligence Agency, South African Secret Service or South African National Academy of Intelligence, appointed, or regarded as having been appointed, in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002);

“member of the Security Services” means a member of—

- (a) the Regular Force of the South African National Defence Force, appointed, or regarded as having been appointed, in terms of the Defence Act, 2002 (Act No. 42 of 2002);
- (b) the South African Police Service, appointed, or regarded as having been appointed, in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
- (c) the Department of Correctional Services, appointed, or regarded as having been appointed, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998);

“Minister” means the Minister responsible for public administration;

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“Municipal Council” means a Municipal Council referred to in section 157(1) of the Constitution;

“municipal government agency” means a municipal government agency listed in Part C of Schedule 2;

“municipal manager” means the municipal manager of a municipality appointed in terms of section 19(1) and includes any employee acting in such post;

“Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2002 (Act No. 32 of 2000);

“municipality” means a municipality established in terms of section 155 of the Constitution;

“national department” means a national department listed in Part A of Schedule 1;

“national government agency” means a national government agency listed in Part A of Schedule 2;

“Office of a Premier” means the Office of a Premier listed in Part B of Schedule 1;

“operational requirements” means operational requirements as defined in section 213 of the Labour Relations Act;

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“organised local government” means an organisation recognised in terms of section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially;

“post” means a post on the establishment for which financial provision exists;

“prescribed” means prescribed by regulation made in terms of section 41;

“principal department or municipality”, in relation to a national, provincial, municipal government agency, means the body listed in column 3 in Part A, B or C of Schedule 2;

“provincial department” means a provincial department listed in Part C of Schedule 1;

“provincial government agency” means a provincial government agency listed in Part B of Schedule 2;

“Public Administration” means all the institutions and their employees contemplated in section 2(1);

“public administration institution” means a department, municipality or government agency;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“regulation” means a regulation made in terms of section 41;

“salary level” means a set of salaries;

“salary scale” means a set of salary levels from a minimum to a maximum;

“Senior Management Service” means the senior management service contemplated in section 36(1);

“service centre” means a Service Centre referred to in section 5;

“service plan” means a Service Plan referred to in section 4;

“this Act” includes the regulations, determinations, deemed determinations and directives made, or notices issued, in terms of this Act.

Composition of Public Administration and scope of Act

- 2.(1) The Public Administration consists of—
- (a) the following institutions:
 - (i) all national departments and national government agencies;
 - (ii) all Offices of the Premier, all provincial departments and provincial government agencies; and
 - (iii) all municipalities and municipal government agencies; and
 - (b) the employees of every institution referred to in paragraph (a).
- (2) Except where provided otherwise in this Act, the provisions of this Act apply to the institutions and their employees referred to in subsection (1).²

² Include NPA employees? Discuss with DoJ&CD.

(3) Where members of the Security or Intelligence Services or educators or their institutions are not expressly excluded from the provisions of this Act, those provisions apply to such members or educators or institutions only in so far as they are not contrary to the laws governing their employment.³

(4) Despite subsection (3), members of the Security Services and such Security Services are subject to norms and standards envisaged in section 6(1)(e), (g), (j) and (i), read with section 6(2).

Objects of Act

3.(1) The principal object of this Act is to provide for administration in all three spheres of government to be organised and to function in ways that ensure efficient, quality, collaborative and accountable service delivery to promote social and economic development for the people of the Republic.

(2) The ancillary objects of this Act are to—

- (a) provide for institutions, systems and mechanisms and for human resources' utilisation and development in a manner which best enhances service delivery by public administration institutions;
- (b) establish a culture of service delivery across public administration institutions and provide for standards for services by public administration institutions;
- (c) strengthen relations between the spheres of government;
- (d) enhance coherent, integrated planning, budgeting, implementation, reporting, monitoring and evaluation in all spheres of government in general and specifically in relation to work involving the participation of

³ **FLAGGED FOR DISCUSSION WITH PRINCIPALS:** Why is local government not dealt with in the Bill similar to educators, SAPS, Correctional Services, SANDF and intelligence services (herein called "Security & Education Sectors") particularly in view thereof that it is separate sphere of government and that it is currently not part of the "public service"? The (own) employment legislation of the security and education sectors currently prevails, and in terms of this Bill, will prevail, over this Act in cases of conflict, except when contrary to determinations made by the MPSA. If local government is dealt with similarly, it would mean that they should have their own employment law - this contradicts the approach endorsed by the Cabinet in May 2006. The aim of the single public service project's aim is to regulate the public service and local government under a single framework. It is important to note that it will be proposed in this Bill to repeal the whole of the Public Service Act and to repeal or amend all provisions in other legislation (e.g. Municipal Systems and Structures Acts) which are to be regulated by or under this Bill in respect of local government.

- two or more public administration institutions in the same sphere or in different spheres of government;
- (e) provide for frameworks for employment practices, including employee relations and conditions of service, for all employees of all public administration institutions;
 - (f) provide for deviations from frameworks to take into account the specific nature and functions of categories of public administration institutions;
 - (g) provide for the transfer of functions and employees between the spheres of government and institutions within such spheres;
 - (h) establish a single senior management service across all public administration institutions;
 - (j) provide for human resource management and career development practices to maximise human potential, to address staff shortages and barriers to staff mobility and to align training and other capacity building;
 - (j) provide for standards of conduct and anti-corruption measures to promote performance and people-orientated service delivery, and ethical conduct and professionalism of employees; and
 - (k) provide for electronic government as a key mechanism to improve internal efficiency of institutions and service delivery;⁴
 - (l) promote innovation for the purpose of enhanced effectiveness, efficiency and economy of service delivery.

CHAPTER 2

SERVICE DELIVERY ARRANGEMENTS

Service plans

4. The head of each public administration institution must establish and maintain a service plan as prescribed with the aim to—
- (a) rapidly improve efficiency and quality of, and accountability for, services of the institution to best meet the specific needs of all the different recipients of services; and
 - (b) establish and maintain a culture of service delivery by its employees.⁵

⁴ In addition to provision for regulation on e-government, other provision may be proposed later for inclusion.

Service Centres

5.(1) Each municipality must establish a service centre as a site⁶ for service delivery across the spheres of government to enhance accessibility, convenience and effectiveness of services in addition to other means of service delivery.⁷

(2) The Minister must stipulate a time frame for municipalities to establish service centres taking into account the financial and administrative capacity of each municipality.⁸

(3) The Minister must determine a protocol regarding—

- (a) the services to be delivered at each service centre or a category of service centres and the standards for the delivery of those services;
- (b) the management and governance arrangements for the centres and the powers and duties of the municipalities and those institutions whose services are to be delivered at the centres⁹;
- (c) the staffing arrangements for the centres, including the utilisation of employees of the municipality and participating institutions;
- (d) in accordance with any applicable legislation, the financial arrangements for the centres; and
- (e) any other matter necessary for the effective and efficient functioning of the centres.

CHAPTER 3

GENERAL FUNCTIONAL AND ORGANISATIONAL ARRANGEMENTS

Functions of Minister

6.(1) The Minister as the political head of the Public Administration must approve norms and standards for the Public Administration in respect of—

⁵ Provide for inclusion of this plan (or its requirements) in strategic plans and integrated development and other plans iro municipalities (ss25-37 of Municipal Systems Act). Note provisions in the Municipal Systems Act on provisions of services (s76-81 of that Act) and national norms and standards for services (s108 of that Act).

⁶ Would this cover mobile sites?

⁷ Consider establishing centres as **government agencies** of municipalities (see cl 11(1)(e) and 12). Would entail that it has its own head (accounting officer) and staff.

⁸ Should enable different dates for different municipalities.

⁹ Only services of public administration institutions to be delivered at a Centre or also **other organs of state**?

- (a) the functions of the public administration institutions without derogating from the provisions of other legislation conferring functions on any such institutions or any of their functionaries;
- (b) the organisational structures and establishments of public administration institutions and other organisational and governance arrangements;
- (c) capacity building, training and development;
- (d) the conditions of service and other employment practices for employees;
- (e) human resource systems;
- (f) labour relations;
- (g) health and wellness;
- (h) information management;
- (j) electronic government;
- (i) integrity, ethics, conduct and anti-corruption measures;
- (j) enabling transformation, reform or innovation and any other matter to improve the effectiveness and efficiency of the public administration institutions; and
- (k) any other matter necessary to give effect to the objects of this Act, referred to in section 3.

(2)(a) The Minister must give effect to subsection (1), by making regulations, determinations and directives, and performing any other acts, as provided for in this Act.

(b) When so giving effect to subsection (1), the nature and functions of different public administration institutions or categories of public administration institutions, as envisaged in section 195(6) of the Constitution, must be taken into account.

(3) The Minister—

- (a) may, by notice in the *Gazette*, establish an advisory or consultative body on any matter referred to in subsection (1);
- (b) may, on the request of the President or an executive authority, advise or assist in such manner and on such conditions as the Minister and the President or that authority agree, as to any matter relating to—
 - (i) the Public Administration;
 - (ii) employees or office-bearers of any organ of state outside the Public Administration or that organ's employment practices;
- (c) may, in accordance with section 231 of the Constitution, enter into international agreements with the governments of other states or

international organisations to enhance the objects of this Act, or regional, African or international co-operation or development regarding any public administration matter;

- (d) must advise the President on the establishment of national departments and government agencies as provided in section 12(1);
- (e) may allocate and transfer functions in respect of national and provincial departments and national and provincial government agencies as provided for in section 14;¹⁰
- (f) may determine the conditions of service of employees as provided for in section 24;
- (g) may determine all employment matters of members of the Senior Management Service as provided for in section 37;
- (h) may make regulations as provided for in section 41;
- (i) may exercise any other powers and must perform any other duties conferred or imposed by this Act or any other law.

(4) All public administration institutions and other organs of state and their office-bearers and employees must afford the Minister, or any person authorised in writing by that Minister, such assistance, including access to information, as may be reasonably required for the effective performance of the Minister's functions in terms of this Act or any other law.

(5) The notice in the *Gazette* for the establishment of an advisory or consultative body, in terms of subsection (3)(a), must set out the composition, functions and procedures of the body, the remuneration of its members and any other matter necessary for its proper functioning.

Required consultation by Minister on local government matters¹¹

7. Before the Minister performs a function in terms of this Act which may affect—

- (a) any matter relating to one or more category of municipalities or all municipalities, the Minister must consult the Minister for Provincial and

¹⁰ Legal opinion sought on extending this provision to municipalities and municipal government agencies.

¹¹ Clause 6(3) could also be used to establish a consultative body for this purpose?

Local Government and the national intergovernmental forum for local government established or regarded as having been established in terms of section 9 of the Intergovernmental Relations Framework Act, 2005 (Act No. 15 of 2005);¹²

- (b) any condition of service of employees of any category or all categories of municipalities, the Minister must consult organised local government.¹³

Limitation or implementation of actions in Public Administration

8.(1) Any act by any functionary in terms of this Act may not be contrary to the provisions of any collective agreement concluded by a bargaining council envisaged in the Labour Relations Act for the Public Administration as a whole or for a particular sector in the Public Administration.¹⁴

(2) A determination¹⁵ made or directive issued by the Minister in terms of this Act—

- (a) must take effect on the date of the written communication conveying the making of the determination or the issuing of the directive, unless expressly stated otherwise in that communication, determination or directive;
- (b) may be withdrawn or amended in the same manner.

(3) Any act by the Minister in terms of any provision of this Act which relates to all employees, a category of employees or a particular employee may be effected retrospectively if—

- (a) circumstances exist which justify such retrospective effect; and
- (b) the act is not to the detriment of the employee or employees concerned.

(4) For purpose of this section the term “act” means the making of any regulation, the making of any determination, the issuing of any directive or the taking of any decision.

¹² **FLAGGED FOR DISCUSSION WITH PRINCIPALS:**

(1) Instead for “Minmec” for LG establish consultative body in terms of clause 6(3) or included provision in this clause?

(2) Nature of consultation, now only consult, not “in consultation with”.

¹³ Awaiting input from SALGA on other areas requiring consultation with organised local government.

¹⁴ Transitional arrangement for LG collective agreements as well as collective agreements of PSCBC and sectors concluded before commencement of this Act. Include in Schedule 3.

¹⁵ Provide for effective date of deemed determinations ito cl 24(3)?

Functions of executive authorities of public administration institutions

- 9.** An executive authority—
- (a) is politically accountable for every public administration institution within the functional area of that authority;
 - (b) must establish clear relationships, and facilitate co-operation, co-ordination and communication, with the head and other employees of such institution;
 - (c) must facilitate co-operation, co-ordination and communication with all other relevant executive authorities in the same and other spheres of government;
 - (d) make the appointments as provided for in sections 17(1) and 18(1);
 - (e) must hold the head accountable for the administration of the institution;
 - (f) must ensure that an employment contract and performance agreement are concluded with the head, as provided for in section 16(3) or 18(2);
 - (g) must ensure that the performance of the head is evaluated annually;
 - (h) must ensure that the head aligns his or her role and responsibilities with the core objectives of the institution;
 - (i) in the national or provincial sphere of government, may appoint or deploy staff to the office of that executive authority as provided for in section 15;
 - (j) may exercise other powers and must perform other duties conferred or imposed on the executive authority by this Act.

Functions of heads of public administration institutions

- 10.(1)** The head of a public administration institution—
- (a) must establish and maintain its Batho Pele Service Plan and ensure compliance with the Plan by the employees of the institution;
 - (b) must facilitate a culture of efficient, quality, collaborative and accountable service delivery amongst the employees of the institution;
 - (c) must facilitate co-operation, co-ordination and communication with all other relevant heads of public administrations in the same and other spheres of government;
 - (d) must ensure that the institution performs all functions imposed on the institution by this Act and other applicable legislation;

- (e) must advise the executive authority on matters regarding the institution;
- (f) must assist the executive authority to fulfil the authority's accountability obligations in relation to the institution;
- (g) must manage the institution efficiently and effectively in accordance with this Act and other applicable legislation, including, but not limited to, by—
 - (i) creating appropriate management structures and assigning clear responsibilities to such structures;
 - (ii) ensuring efficient decision-making within the institution and co-ordination of functions of different units;
 - (iii) delegating responsibility to the most effective level within the administration;
- (g) may make the appointments provided for in section 22(1);¹⁶
- (h) may, subject to this Act, exercise all the powers and must perform the duties that are necessary for—
 - (i) the internal organisation of the institution, including the organisational structure and the transfer of functions within the institution;
 - (ii) the post establishment of the institution, including the creation and abolition of posts;
 - (iii) the appointment, management, training and development, deployment, discipline and other career incidents of employees; and
 - (iv) an equitable, fair, open and non-discriminatory working environment.¹⁷
- (i) may exercise other powers and must perform other duties conferred or imposed on the head by this Act or any other law.
- (2) In addition to any function conferred by or under this Act or any other law, the head of the Office of a Premier—

¹⁶ **FLAGGED FOR DISCUSSION WITH PRINCIPALS:** Vesting of appointment powers in administrative head instead of political head. See also cl 10(1)(f) iro of internal organisation and staff establishment. Currently, in respect of national & provincial departments, these powers vest in the political head (executing authority). Change proposed in view position of head as accounting officer in terms of financial legislation. Proposal iro appointments for employees (other than municipal manager and those reporting to him/her) aligned with current position for municipalities. Consider giving the power to appoint staff, directly reporting to head (or next level) to the head as well. Could require consultation (nature?) with EA on these appointments or all SMS appointments.

¹⁷ See footnote 18.

- (a) is the Secretary to the Executive Council of the province concerned;
- (b) subject to sections 85(2)(c) and 125(2)(e) of the Constitution, is responsible for—
 - (i) intergovernmental relations on an administrative level between the relevant province and other provinces, national departments, national government agencies, municipalities and municipal government agencies; and
 - (ii) the intragovernmental co-operation between the Office of the Premier and the provincial departments and provincial government agencies in the province, including the co-ordination of their actions and legislation; and
- (c) must give strategic direction on any matter referred to in section 6(1).

Establishment of national and provincial departments, and government agencies in any sphere of government

- 11.(1) The President¹⁸ may—
- (a) on the advice of the Minister, establish or abolish any national department, designate such department and the head thereof, or amend any such designation, by amending Part A of Schedule 1 by proclamation in the *Gazette*; or
 - (b) on the request of the Premier of a province, establish or abolish any provincial department, designate such department or the head thereof, or amend any such designation, by amending Part C of Schedule 1 by proclamation in the *Gazette*;
 - (c) on the request of the relevant executive authority and the advice of the Minister, establish or abolish any national government agency, designate such agency and the head and principal department thereof, or amend any such designation, by amending Part A of Schedule 2 by proclamation in the *Gazette*;

¹⁸ **FLAGGED FOR DISCUSSION WITH PRINCIPALS:** Alternatively, Minister, in consultation with the Minister responsible for local government, where appropriate, by notice in the *Gazette*, for all OR that Minister only for national departments and agencies, the Premier for provincial departments and agencies and Municipal Council/Mayor with approval of Municipal Council?

- (d) on the request of the Premier of a province and after consultation with the Minister, establish or abolish any provincial government agency, designate such agency and the head and principal department thereof, or amend any such designation, by amending Part B of Schedule 2 by proclamation in the *Gazette*.
 - (e) on the request of a Municipal Council and after consultation with the Minister, establish or abolish any municipal government agency, designate such agency and the head and principal municipality thereof, or amend any such designation, by amending Part C of Schedule 2 by proclamation in the *Gazette*.
- (2) If considered necessary, the President may effect such amendment retrospectively to a date requested by the Minister, the relevant executive authority, the Premier or Municipal Council, as the case may be.
- (3) The President must give effect to any request referred to in subsection (1)(b), (d) or (e) if satisfied that it is consistent with the Constitution, this Act and any other applicable law.
- (4) Only the head of a national department and the Office of a Premier may bear the designation of 'Director-General'.

Government agencies

12.(1) The head of a government agency may have any one or more of the following powers or duties or both such powers and duties:

- (a) Powers conferred, or duties imposed, by national or provincial legislation or municipal by-laws;
 - (b) powers or duties assigned in terms of subsection (3) or other legislation; and
 - (c) powers or duties delegated in terms of subsection (4) or other legislation.
- (2) For each government agency, the relevant executive authority, in consultation with the Minister and the Minister of Finance,¹⁹ and by notice in the *Gazette*—
- (a) must—
 - (i) list the relevant provisions of legislation which confer powers and impose duties on the head of the agency;

¹⁹ Involvement of Premier and/or MEC for finance? Too cumbersome to include?

- (ii) refer to each notice regarding assigned powers and duties of the head of the agency, contemplated in subsection (3);
- (b) may list the delegated powers and duties of the head of the agency contemplated in subsection (4);
- (c) must, subject to other legislation, determine the reporting requirements to the head of the principal department or municipality to enable that head to advise the relevant executive authority on the oversight of the agency in respect of policy implementation, performance, integrated planning, budgeting and service delivery;
- (d) may include any administrative or operational matter relating to the agency, including the sharing of internal services with the principal department;
- (e) may establish an advisory board without executive functions for the agency and determine the board's composition, appointment procedure and remuneration and all matters required for its effective and efficient functioning; and
- (f) may include any other matter necessary for the effective and efficient functioning of the agency.

(3)(a) Despite anything to the contrary in any other law, the executive authority of a government agency may assign to the head of that agency any power conferred, or duty imposed, on—

- (i) that executive authority (except the making of regulations) by national legislation; or
- (ii) any official of the principal department of that agency by national legislation.
- (b) Such assignment is subject to—
 - (i) if the executive authority is not the national Minister responsible for the administration of the national legislation in question (herein referred to as the responsible Minister), the approval of that Minister;
 - (ii) the approval of Parliament of the intended notice as contemplated in this subsection; and²⁰
 - (iii) publication by notice in the *Gazette*.
- (c) The notice must stipulate—
 - (i) the powers and duties to be assigned in terms thereof;

²⁰ Legal opinion to be requested on the need for Parliamentary approval.

(ii) the effective date of the assignment; and
(iii) the conditions that the executive authority considers appropriate.
(d) The responsible Minister must table the notice in Parliament for approval.
(e) Parliament may reject the notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session.

(f) If Parliament rejects such notice, the responsible Minister may table an amended notice in Parliament.

(g) If the responsible Minister tables an amended notice and Parliament—

(i) approves the amended notice, the responsible Minister must publish that notice in terms of paragraph (b)(iii) within 30 days of the Parliament's approval; or

(ii) rejects the amended notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session, paragraph (e) and this paragraph apply.

(h) If Parliament does not reject a notice as contemplated in paragraph (e) or (g) (ii)—

(i) such notice will be regarded as having been approved by Parliament; and
(ii) the responsible Minister must publish the notice in terms of paragraph (b)(iii) within 30 days thereafter.

(i) A notice may at any time in like manner be amended or withdrawn.

(j) Any assignment in terms of this subsection must divest the person whom was vested with the assigned power or duties.

(4)(a) Despite anything to the contrary in any other law, the executive authority of a government agency or the head of the principal department or municipality of that agency may, except a power or duty to make regulations—

(i) delegate to the head of the agency any power conferred on that executive authority or head of the principal department or municipality by national legislation; or

(ii) authorise the head of the agency to perform any duty imposed on the executive authority or head of the principal department by national legislation.

(b) Any person to whom a power has been so delegated or who has been so authorised to perform a duty, must exercise that power or perform that duty subject to

the conditions the person who made the delegation or granted the authorisation considers appropriate.

(c) Any delegation of a power or authorisation to perform a duty in terms of paragraph (a)—

- (i) must be in writing;
- (ii) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (iii) may at any time be withdrawn in writing by that person.

(5) Nothing in this section prevents the assignment or delegation of powers or duties to—

- (a) the head of a provincial government agency or the agency itself in accordance with provincial legislation of the province in question; or
- (b) the head of a municipal government agency or the agency itself in accordance with a municipal by-law of the municipality in question.

Capacity building

13.(1) For purposes of building capacity, an Academy, which is listed as a national department in Schedule 1—

- (a) must provide such training or cause such training to be provided or conduct such examinations or tests or cause such examinations or tests to be conducted as the Head of the Institute may with the approval of the Minister decide or as may be prescribed as a qualification for the appointment or transfer of persons in one or more public administration institutions; and
- (b) may issue diplomas or certificates or cause diplomas or certificates to be issued to persons who have passed such examinations.²¹

(2) For the purpose of capacity building, members of the Senior Management Service must, as prescribed, be encouraged to teach at—

- (a) a higher education institution, as defined in section 1 of the Higher Education Act, 1997 (Act No. 107 of 1997); or

²¹ Essence of current s4(2) of Public Service Act retained – need for separate provisions to be considered in view of cl 6(1)(c), read with cl 6(2), as well as the enabling provision for the establishment of departments and allocation of functions in terms of cl 14. If retained, alignment with SAQA Act and other relevant legislation should be ensured.

- (b) a further education and training institution, as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998).²²

CHAPTER 4

PROVISIONS PERTAINING TO ADMINISTRATIONS IN NATIONAL AND PROVINCIAL SPHERES OF GOVERNMENT

Transfer of functions in respect of departments

14.(1) The Minister may, subject to any other legislation and after consultation with the relevant executive authority or executive authorities—

- (a) allocate any function to, or abolish any function of, any national department or national government agency; or
- (b) transfer any function from one national department or national government agency to another or from a national department to a national government agency or any other body or from a national government agency to a national department or any other body or from any other body to a national department or national government agency;

(2) The Minister may, in consultation with the Premier of the province concerned—

- (a) allocate any function to, or abolition any function of, the Office of the Premier, provincial department or provincial government agency; or
- (b) transfer any function from—
 - (i) the Office of the Premier, provincial department or provincial government agency of a province to the Office of the Premier, provincial department or provincial government agency of another province;
 - (ii) the Office of the Premier, provincial department or provincial government agency to a national department or any body established by or under any law, other than a provincial law; or
 - (iii) a national department or such other body to the Office of the Premier, provincial department or provincial government agency.

(3) The Premier of a province may—

²² Need for this provision in the Bill, omit or insert in SMS Chapter?

- (a) allocate any function to, or abolition any function of, the Office of the Premier or any department or government agency in the province concerned; or
 - (b) transfer any function from that Office, department or agency to another department or agency in the province or from that Office, department or agency to any body established by or under any law of the provincial legislature or from any such body to such office, department or agency.
- (4) When a function is allocated, abolished or transferred in terms of this section, the human and other resources must be arranged in accordance with this Act and the Public Finance Management Act, and a determination made by—
- (a) in the case of subsection (1), the Minister after consultation with the relevant executive authorities;
 - (b) in the case of subsection (2), the Minister in consultation with the relevant Premier;
 - (c) in the case of subsection (3), the relevant Premier after consultation with the Minister and the relevant executive authorities.
- (5) For purposes of this section, the term “function” excludes any function conferred, including any power conferred, or any duty imposed, by any other legislation.

Staffing of offices of executive authorities of departments

- 15.(1) Any executive authority of a department may—
- (a) appoint in the office of that authority one or more persons for a fixed period not exceeding the term of the office of the relevant person as executive authority;²³
 - (b) after consultation with the head of the department, second one or more employees from the institution to the office of the authority in terms of section 26;
- (2) Subject to subsection (3), an executive authority of a department may appoint one or more persons as special advisers under a contract for a fixed period on a full-time or part-time basis—
- (a) to advise the authority on the performance of the authority’s functions; or

²³ Could provide for procedure different from employees appointed to s22(1). To be seen as part of institution or separate body, e.g. “Office of Executive Authority”?

- (b) to advise the authority on the development of policy that will promote the relevant department's objectives;
- (c) to perform such other tasks as may be appropriate in respect of the authority's functions.
- (3) The national Cabinet must determine—
 - (a) which categories of the executive authorities may appoint special advisers in terms of subsection (2) and the maximum number that may be so appointed; and
 - (b) the upper limits of the remuneration and other conditions of service of special advisers.
- (4) The contract referred to in subsection (2) must include—
 - (a) the period of the appointment not exceeding the term of the office of the relevant person as executive authority;
 - (b) the particular duties of the person; and
 - (c) the remuneration and other conditions of service of the person.

Appointment and career incidents of heads of department

16.(1) The appointment and other career incidents of the heads of department and government agencies must be dealt with by, in the case of—

- (a) a head of a national department or national government agency, the President; and
 - (b) a head of the Office of a Premier, provincial department or provincial government agency, the relevant Premier with the approval of the Executive Council of the Province.
- (2) For the appointment of—
- (a) a head of a national department or national government agency, the concurrence of the national Cabinet is required; and
 - (b) a head of the Office of a Premier, provincial department or provincial government agency, the concurrence of the Executive Council of the province in question is required.

(3)(a) A person must, subject to paragraph (b), be appointed in the post of head of department in accordance with section 22(2) and (3) and for such term not exceeding five years as the relevant executive authority may approve.

(b) A person appointed for the first time in the post of head of a particular department must be appointed for a term of five years, except if a shorter term is determined by the executive authority in accordance with prescribed criteria.

(c) The head of department must conclude the prescribed contract of employment within the prescribed period and the prescribed performance agreement for every financial year.

(c) The relevant executive authority may at the expiry of the term of office or, at the expiry of an extended term of office, extend the term for a period of not more than five years at a time.

(4)(a) The President may transfer the head of a national department or national government agency before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in a national department or national government agency in a post of equal, higher or lower grading, or additional to the establishment, as the President considers appropriate.

(b) The Premier of a province may transfer the head of the Office of the Premier, a provincial department or a provincial government agency before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in the Office of the Premier, a provincial department or a provincial government agency of the relevant province in a post of equal, higher or lower grading or additional to the establishment, as the Premier considers appropriate.

(c) The President may, in consultation with the Premier or Premiers concerned, transfer before or at the expiry of his or her term, or extended term—

(i) the head of a national department to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or a provincial government agency; or

(ii) the head of the Office of a Premier, a provincial department or a provincial government agency, to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or provincial government agency of another province or in a national department or national government agency,

in a post of equal, higher or lower grading or additional to the establishment, as the President, in consultation with the Premier or Premiers, considers appropriate.

(d) A transfer in terms of this subsection may only occur if—

- (i) the head has the skills and knowledge necessary for the intended capacity upon transfer; and
 - (ii) the relevant head of department consents to the transfer or, in the absence thereof, after due consideration of any representations by the head, the transfer is in the public interest.
- (e) Any person appointed as head of department or government agency who is transferred in terms of this subsection—
- (i) during his or her term or extended term—
 - (aa) may for the unexpired portion of that term, not suffer any reduction in salary and other conditions of service, unless he or she consents thereto; and
 - (bb) to a higher post, may not by reason only of that transfer be entitled to the higher salary applicable to the higher post; and
 - (ii) at the expiry of his or her term of office, or extended term, must receive the salary and conditions of service attaching to the capacity in which he or she is so transferred.
- (5) If in the public interest and permitted by a determination made in terms of section 24, an executive authority may, on the conditions provided for in that determination, grant a special service benefit to the head of department before or at the expiry of his or her term of office or an extended term, or at the time of resignation, retirement or discharge from the public service.

Appointment of other senior employees of departments

- 17.(1) The relevant executive authority must, in accordance with section 22(2) and (3), appoint all employees of a department on a post level immediately below the head of the department and must make appointment, in the case of—
- (a) a national department or national government agency, with the concurrence of the national Cabinet; and
 - (b) the Office of a Premier, provincial department or provincial government agency, with the concurrence of the Executive Council of the province.
- (2) The relevant executive authority is responsible for all other career incidents of employees referred to in subsection (1).

CHAPTER 5
PROVISIONS PERTAINING TO ADMINISTRATION IN LOCAL SPHERE OF
GOVERNMENT²⁴

Appointment of municipal managers and other senior employees

18.(1) The Municipal Council of a municipality must in accordance with section 22(2) and (3) and subsection (2), appoint and is responsible for the other career incidents of—

- (a) the municipal manager of the municipality; and
- (b) all managers directly accountable to the municipal manager.

(2)(a) A person may be appointed as municipal manager for such term not exceeding five years as the relevant municipal council may approve.

(b) A person appointed for the first time in the post of municipal manager of a particular municipality must be appointed for a term of five years, except if a shorter term is determined by the municipal council in accordance with prescribed criteria.

(3) The municipal manager must conclude—

- (a) the prescribed contract of employment within the prescribed period; and
- (b) the prescribed performance agreement for every financial year.²⁵

CHAPTER 6
GENERAL EMPLOYMENT MATTERS

Employment capacities

19.(1) Persons may, subject to the prescribed conditions, be employed permanently or temporarily, either full-time or part-time—

- (a) in posts on the establishment of public administration institutions;
- (b) additional to the establishment of public administration institutions.

²⁴ **Flagged: Proposals from DPLG and SALGA being awaited on other required/desired provisions particular/unique to municipalities.** If none, apart from current cl 18, separate chapters (see current Chapters 4 and 5) for national and provincial government on the one hand and local government on other hand should be removed. Any required/desired differentiation should then be provided for in the regulations.

²⁵ Extensions and provisions for deployment similar to heads of national/provincial departments? **Flagged:** Consider inclusion as part of clause dealing with heads of national/provincial departments.

- (2) For purpose of this Act, in relation to employment—
 - (a) the word “permanently” or “permanent” used in respect of an employee means an employees to whom a retirement age in section 30 applies; and
 - (b) the word “temporarily” or “temporary” used in respect of an employee means an employee not permanently employed.

Mechanisms for obtaining services of individuals

20. The services of individuals in public administration institutions may be obtained in terms of this Act by means of—

- (a) appointments in terms of section 15(1) or (2), 16(1), 17(1), 18(1) and 22(1); or
- (b) deployments in the form of—
 - (i) transfers in terms of section 16(4) or 26;
 - (ii) secondments in terms of section 26; and
 - (iii) assignments in terms of section 29.

Employer in relation to employee of public administration institution

21. For purposes of this Act, the functionary vested by this Act with the power to appoint an employee is, subject to the provisions of this Act, the employer of the employee.

Appointments in public administration institutions

22.(1) The head of a public administration institution may appoint persons in the institution, except the appointments referred to in sections 15(1), 16(1), 17(1) and 18(1).

(2) All appointment in the Public Administration must be made in accordance with this Act and in such manner and on such conditions as may be prescribed.

(3) No person may be appointed permanently whether on probation or not, to any post on the establishment in a public administration institution unless he or she—

- (a) is a South African citizen or permanent resident; and
 - (b) meets the applicable job requirements.
- (4) In the making of appointments in the Public Administration—

- (a) due regard must be had to equality and the other democratic values and principles enshrined in the Constitution;
- (b) all persons who applied and qualify for the appointment concerned must be considered; and
- (c) the evaluation of persons must be based on training, skills, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act No. 55 of 1998), the imbalances of the past to achieve a public administration broadly representative of the South African people, including representation according to race, gender and disability.

Probation

23.(1) An employee must be appointed or transferred on probation if required by regulation for the period prescribed for the relevant category of employees.

(2) After the completion of a probationary period, contemplated in subsection (1), the probationary appointment or transfer of the employee must be confirmed if the employee concerned has—

- (a) performed at least satisfactorily during the period; and
- (b) complied with all the conditions to which his or her appointment or transfer was subject.

(3) If the probationary appointment or transfer is not confirmed in terms of subsection (2), the period of probation may be extended in accordance with the Labour Relations Act.

Conditions of service

24.(1) The Minister may, subject to sections 7 and 8(1), make determinations regarding any conditions of service for employees in the Public Administration generally or for a particular category of employees, including, but not limited to, a salary scale for all employees or salary scales for particular categories of employees and allowances for particular categories of employees.

(2) A determination involving expenditure from revenue must be made with due regard to the financial capacity of each municipality and in consultation with the Minister responsible for national financial matters.

(3)(a) Before engaging in negotiations on any matter of mutual interest in a bargaining council referred to in section 8(1), the institution representing the employer in the relevant bargaining council must obtain a mandate from a committee of Ministers designated by the national Cabinet .

(b) Any mandate in terms of paragraph (a), which affects municipalities, must be given with due regard to the financial capacity of each municipality.²⁶

(4)(a) Any provision of a collective agreement, referred to in section 8(1), concluded on or after the commencement of this Act, is, in respect of conditions of service of employees appointed in terms of this Act, regarded as a determination made in terms of subsection (1).

(b) The Minister may supplement or elucidate such determination by means of a determination made in terms of subsection (1).

(5) Despite section 8(1), but subject to the Labour Relations Act, the last offer made by the employer in a bargaining council referred to in section 8(1) on a specific matter may, if a deadlock in negotiations is reached, be implemented by acting in terms of this Act or any other law, provided that any such act does not have the effect of reducing existing remuneration or other conditions of service.²⁷

Other employment practices

25.(1) The Minister may prescribe by regulation any employment practice, except to the extent provided for elsewhere in this Act.

(2) If any such employment practice is not so prescribed for any employee, the employer of that employee may determine the employment practice for the employee.²⁸

Transfers and secondment

²⁶ See Part A of Schedule 3 regarding proposed amendments to the Labour Relations Act in respect of bargaining councils for the Public Administration.

FLAGGED FOR DISCUSSION WITH PRINCIPALS:

(1) Funding arrangements for local government.

(2) Mandating arrangements in subsection (3).

²⁷ Alternative: “the effect of any such act may not in the aggregate be less favourable than the existing conditions of service of the affected employees.” Too difficult to calculate?

²⁸ Note provisions in the Municipal Systems Act on performance management systems (s38-49 of that Act), which is an “employment practice”, as defined in this Bill and in respect of which the MPSA may determine norms and standards.

26.(1) Subject to this section, any employee of a public administration institution may be—

- (a) transferred within that institution, by the employer;
- (b) transferred to another public administration institution by the respective functionaries vested with the power to appoint an employee in the capacity of the employee to be transferred;²⁹
- (c) seconded to another public administration institution or any other organ of state by the respective functionaries vested with the power to appoint an employee in the capacity of the employee to be seconded;
- (d) transferred or seconded to another public administration institution, by the Minister, after consultation with the executive authorities of the respective institutions.³⁰

(2) An employee may only be transferred or seconded in terms of subsection (1)(d) from or to a municipality with the concurrence of the employer of that employee.

(3) The purpose of the transfer or secondment must be to improve the efficient functioning of the institution to which the employee is transferred or seconded.

(4) The transfer or secondment in terms of subsection (1) must be made in such manner and on such conditions as may be prescribed.

- (5) An employee may be so transferred or seconded only if—
 - (a) the employee has the skills and knowledge necessary for the intended capacity upon transfer or secondment; and
 - (b) the employee requests the transfer or secondment or consents thereto or, in the absence of such request or consent, after due consideration of any representations by the employee, the transfer or secondment is in the public interest.
- (6) An employee who has been transferred to a post with—
 - (a) a lower salary than his or her salary before the transfer, may not upon such transfer suffer any reduction in salary, except if he or she requested the transfer, or he or she consents to the reduction; or
 - (b) a higher salary than his or her salary before the transfer, may not by reason only of that transfer be entitled to the higher salary.

²⁹ Provide for transfers to other organs of state?

³⁰ Provide that MPSA deploy employees of national & provincial departments and between a national/provincial department on one hand and municipality on other hand and then enable MPLG to deploy municipal employees from municipality in one province to municipality in another province, after consultation with relevant employers and enable MEC for local government to deploy municipal employees from one municipality to another within the same province?

(7) Any employee who has been seconded in terms of subsection (1) remains subject to the conditions of service and other employment practices of the public administration institution from which he or she seconded, except to the extent provided otherwise in the conditions envisaged in subsection (4).

(8) If in the public interest and the prescribed prerequisites (if any) are complied with, the head of a public administration institution may, with the approval of the employer concerned, second a person in the service of an organ of state (other than a public administration institution), another government or any other body, to the public administration institution—

- (a) for a particular service or period not exceeding the prescribed period (if any); and
- (b) on the prescribed conditions (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the head.

Change in employment capacity within Public Administration

27. An employee who is appointed in another capacity in the same or another public administration institution, or transferred within the Public Administration in terms of this Act, is regarded to continue employment without any break in service in respect of such conditions of service and to such extent as may be determined in terms of section 24.³¹

Employees of other organs of state appointed in public administration institution

28. A person who immediately before his or her appointment in terms of this Act, was employed by an organ of state other than a public administration institution, must be regarded as having been transferred to the Public Administration in respect of such conditions of service and to such extent as may be determined in terms of section 24.³²

Assignment of other functions to employees and acting in posts

³¹ Inter alia pension issues will have to be dealt with.

³² Inter alia pension issues will have to be dealt with.

29.(1) Subject to such conditions as may be prescribed, an employer may direct an employee under his or her control temporarily to perform any functions other than those ordinarily assigned to the employee or appropriate to his or her grade or post.

(2)(a) An employee may be directed in writing to act in a post subject to such conditions as may be prescribed.

(b) Such acting appointment must be made—

(i) in the case of the post of head of public administration institution, by the relevant executive authority of that institution, despite section 16(1);

(ii) in the case of any other post, by the employee occupying the post, unless otherwise determined by the head.

(3) The performance evaluation of the relevant employee must take place with due regard to a direction in terms of subsection (1) or (2).

Other remunerative work by employees³³

30.(1) No employee may perform or engage to perform remunerative work outside his or her employment in the Public Administration, except with the written permission of—

(a) in the case of the head of a public administration institution, the relevant executive authority; or

(b) in the case of any other employee, the head of the public administration institution in question.

(2) For purpose of subsection (1), the executive authority or head, as the case may be, must at least consider whether or not the outside work could reasonably be expected to interfere or impede the efficient performance of the employee's functions or constitute a contravention of the code of conduct.

(3) Permission for an employee to perform remunerative work prohibited by section 32 may not be granted in terms of subsection (1).

Employees as candidates for, and becoming members of, legislatures

³³ Also prohibit businesses 'of' employee to do work for government. Rather a procurement issue to be regulated in financial legislation? Discuss with NT.

31.(1) An employee may be a candidate for election as a member of the National Assembly, a provincial legislature or a Municipal Council, subject to the code of conduct and any other prescribed limits and conditions.

(2) Subject to subsection (4), an employee elected as a member of the National Assembly, a provincial legislature or a Municipal Council, is regarded as having resigned with effect from the date immediately before the date he or she assumes office as such member.

(3) An employee appointed as a permanent delegate of the National Council of Provinces is regarded as having resigned with effect from the date immediately before the date he or she assumes office as such delegate.

(4) The following persons may with the permission of the head of their public administration institution remain employees of their respective institutions:³⁴

- (a) An employee of a department (other than its head) elected as a part-time member of a Municipal Council;
- (b) an employee of a municipality (other than its municipal manager) elected as a part-time member of the Municipal Council of another municipality.

(5) For purposes of subsection (4), the executive authority or head, as the case may be, must at least consider whether or not the outside work could reasonably be expected to interfere or impede the efficient performance of the employee's functions or constitute a contravention of the code of conduct.

Conduct of employee or former employee participating in award of work to service providers³⁵

32.(1) If a contract is concluded, or extended, with an individual or body outside the Public Administration (herein referred to as a "service provider") to provide services or goods to a public administration institution against remuneration exceeding an amount determined by the Minister by notice in the *Gazette*, an employee who—

- (a) set criteria for the award of such work to service providers; or

³⁴ **FLAGGED FOR DISCUSSIONS WITH PRINCIPALS:** Also impose prohibition on employees being part-time municipal councillors in view of potential and unforeseen conflict of interest, given that employees of 3 spheres fall under one Act and greater integration of service delivery, e.g. Batho Pele Service Centres. Consider limiting such prohibition to SMS members or unpaid leave for council work?

³⁵ **FLAGGED FOR DISCUSSIONS WITH PRINCIPALS:** Include cooling off period for heads (and other senior employees?) involved in key decisions regarding institutions outside the Public Administration (other than procurement decisions dealt with in this clause). EDndorsed at G&A Workshop on 20/10/2006 - still to be drafted.

- (b) evaluated or adjudicated such providers for the award of such work; or
 - (c) recommended or approved the awarding of such work,
- may not within 12 months after such individual or body was so contracted—
- (i) accept employment with such individual or body or appointment to a board of such body; or
 - (ii) perform work for such individual or body for payment in money or in kind; or
 - (iii) receive any other gratification from such individual or body.
- (2) An individual or a body, referred to in subsection (1), may not—
- (a) employ an employee, referred to in subsection (1), or appoint such employee to a board of such body;
 - (b) engage such employee to perform work for such individual or body for payment in money or in kind;
 - (c) grant any other gratification to such employee.
- (3) Subsections (1) and (2) apply irrespective of whether the employee's employment in the relevant public administration institution terminates any time during the 12-month period in question.
- (4) The relevant employer may, in accordance with the prescribed criteria, approve a period shorter than the 12-month period.
- (5) If the remuneration for an extension of a contract with a service provider together with the remuneration for the original contract and any other extensions (if any), exceeds the amount determined by the Minister in terms of subsection (1), subsections (1) and (2) apply, with the necessary changes, to the first-mentioned extension.
- (6) Any person who contravenes subsection (1) or (2) is guilty of offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or both such fine and imprisonment.
- (7) When a person is convicted of an offence in terms of subsection (6), the court in passing sentence may, in addition to any punishment which that court may impose in respect of the offence, impose on the person a fine not exceeding the monetary value of any proceeds derived from the commission of the offence.
- (8) In order to impose a fine under subsection (7), including the monetary value of such proceeds, the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it considers fit.

Discipline

33.(1) When a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct the employer must, subject to subsection (2), give effect to that sanction.

(2) Where an employee may lodge an internal appeal provided for in a collective agreement or a determination in terms of this Act, a sanction, referred to in subsection (1), may only be given effect to—

- (a) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or
- (b) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged.

(3) The Minister must by regulation make provision for—

- (a) a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered by them, to examine them, and to call for the production of books, documents and other objects;
- (b) travel, subsistence and other costs and other fees for witnesses at disciplinary hearings.

(4) If an employee of a public administration institution (herein referred to as the new institution), is alleged to have committed misconduct in a public administration institution he or she was employed previously (herein referred to as “the former institution”), the head of the new institution—

- (a) may institute or continue disciplinary steps against that employee; and
- (b) must institute or continue such steps if so requested by the former institution.

(5) For purposes of subsection (4), the two relevant institutions must co-operate, including, but not limited to, by exchanging documents and furnishing such written and oral evidence as may be desirable.

Termination of employment³⁶

34.(1) The employer of a public administration institution may, in accordance with the Labour Relations Act, dismiss an employee on account of—

³⁶ Regulate resignation in the Act itself?

- (a) incapacity due to ill health or injury;
- (b) operational requirements of the institution concerned;
- (c) incapacity due to poor work performance; or
- (d) misconduct in accordance with section 33(1) and (2).

(2)(a) An employee who absents himself or herself from his or her official duties without permission of his or her employer for a period exceeding 10 days, is regarded as having resigned with effect from the day immediately before he or she has so absented himself or herself.

(b) If an employee who is regarded as having so resigned, reports for duty within one calendar month, or such longer period as his or her employer may on good cause shown approve, after his or her last day of attendance at his or her place of duty—

- (i) an enquiry must be held into the reasons of such employee's absence;
- (ii) the employer must, on good cause shown, approve the reinstatement of that employee in the public administration institution in his or her former post or any other capacity.

(c) If such employee is so reinstated, the period of his or her absence from official duty is regarded to be absence on leave without pay.

(3) Subsections (1) and (2) do not apply to a member of the Security or Intelligence Services or an educator.

(4)(a) A person dismissed in terms of subsection (1)(d) for misconduct related to the offering or receipt of any undue gratification, or the facilitation of such offering or receipt or any other misconduct, may only be employed by any public administration institution after expiration of a prescribed period.

(b) Different periods may be so prescribed for different categories of misconduct, and one or more category of misconduct may be prescribed in respect of which no period need to expire before a person may again be employed in a department.

(c) Subject to paragraph (a), any decision whether or not to employ a person dismissed in terms of subsection (1)(d), must be taken with due regard to the nature of the misconduct concerned.

(5)(a) If because of a supervening impossibility (other than incapacity referred to in subsection (1)(a) or (c)), an employee is unable to fulfil the terms of his or her contract of employment for the prescribed period, the contract automatically terminates and the employee is regarded as having resigned with effect from the last day of that period.

(b) If an employee who is regarded as having so resigned, reports for duty within one calendar month, or such longer period as his or her employer may on good cause shown approve, after the end of the said prescribed period—

- (i) an enquiry must be held into whether the supervening impossibility still exists; and
- (ii) the employer must on good cause shown approve the reinstatement of that employee in the public administration institution in his or her former post or any other capacity.

Retirement

35. An employee employed permanently—

- (a) must retire at the age of 65 years;
- (b) may retire at any time after reaching the age of 60 years;
- (c) may retire at any time before reaching the age of 60 years, and in such circumstances, as may be prescribed by regulation;
- (d) may be retained after he or she has reached the age of 65 years in such circumstances as may be prescribed.

CHAPTER 7

SENIOR MANAGEMENT SERVICE

Composition and function of Senior Management Service

36.(1) The Senior Management Service consists of—

- (a) all heads of public administration institutions; and
- (b) the other prescribed employees of such institutions.

(2) The function of the Senior Management Service is to provide a group of employees in the Public Administration who—

- (a) provides one or more of the following at a high level:
 - (i) management;
 - (ii) policy advice;
 - (iii) professional expertise;
- (b) actively promotes co-operation within the institution and with other public administration institutions;

- (c) actively promotes the values and principles in section 195(1) of the Constitution, the objects of this Act and compliance with the code of conduct.

Determinations on Senior Management Service's matters

37.(1) The Minister may determine any condition of service or other employment practice in terms of section 24 or 25, in respect of members of the Senior Management Service.

(2) Despite section 2(3) and any other legislation to the contrary, the Minister may, after consultation with the relevant executive authority or authorities, determine that any conditions of service or any other employment practice, made in terms of subsection (1), apply to the specified employees on senior management level who are—

- (a) educators;
- (b) members of the South African Police Service, appointed, or regarded as having been appointed, in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
- (c) members of the Department of Correctional Services, appointed, or regarded as having been appointed, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998).

(3) The provisions of this Act apply to the Senior Management Service in so far as they are not in conflict with the provisions of this Chapter or any regulation or determination made under this Chapter.

CHAPTER 8

COMPLIANCE PROVISIONS

Failures to comply with Act

38.(1) An employer must—

- (a) immediately take appropriate disciplinary steps against employees who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;

- (b) immediately report to the Minister the particulars of such non-compliance; and
- (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken.

(2) The Minister may report to the Cabinet or, through the relevant Premier, to the Executive Council of the relevant province or the relevant Municipal Council, as the case may be any non-compliance by an executive authority with a provision of this Act or a regulation, determination or directive made thereunder.

(3) The Minister must at least annually submit to the relevant committees of Parliament and, through the relevant Premier, to the relevant committees of the relevant provincial legislature, every non-compliance with a provision of this Act or a regulation, determination or directive made thereunder—

- (a) reported in terms of subsection (1);
- (b) confirmed in an investigation in terms of section 40.³⁷

Correction of actions

39.(1) A functionary must correct any action or omission in terms of this Act or purportedly in terms of this Act by that functionary, if the action or omission was based on an error of fact or law or fraud and it is in the public interest to correct the action or omission.

(2) The relevant executing authority must keep record for inspection and report as prescribed any correction by a functionary of a public administration institution within the portfolio of that executive authority.

Compliance audits and investigation of non-compliance

40.(1) For the purpose of assessing and improving compliance with the provisions of this Act and reviewing those provisions for appropriateness, the Minister may from time to time conduct compliance audits in any public administration institution.³⁸

³⁷ Different provisions for employees of municipalities? To which legislatures should contraventions by Municipal Councils as employers be reported?

³⁸ **FLAGGED FOR DISCUSSION WITH PRINCIPALS:** Consider possible overlap with PSC's functions and outcome of review conducted by Parliament. Provide for role for the MPLG in respect of municipalities?

- (2) The Minister may—
 - (a) investigate any alleged non-compliance with this Act; and
 - (b) if such investigation or an investigation by the Public Service Commission or any other investigation, which findings are accepted by the Minister, confirms such non-compliance, the Minister may take the steps considered necessary to correct the consequences of such non-compliance.³⁹
- (3) Any steps, referred to in subsection (2)(b) includes, without limiting the generality of that subsection, the exercise of any power conferred, or the performance of any duty imposed, on the relevant executive authority or head of department by this Act, by the Minister—
 - (a) in the case of a national department or national government agency, after consultation with the relevant executive authority;
 - (b) in the case of the Office of a Premier or a provincial government agency falling under that Premier’s portfolio, in consultation with the Premier in question;
 - (c) in the case of a provincial department or provincial government agency, in consultation with the relevant Member of the Executive Council; or
 - (d) in the case of a municipality or municipal government agency, in consultation with the Minister responsible for local government and the relevant Municipal Council.
- (4) Any power so exercised or any duty so performed by the Minister, is regarded as having been a power exercised or a duty performed by the relevant executive authority or head of department.
- (5) The Minister must inform the Chairperson of the Public Service Commission of—
 - (a) an intended investigation in terms of this section, before its commencement; and
 - (b) the outcome of a compliance audit or investigation conducted in terms of this section.

CHAPTER 9
GENERAL PROVISIONS

³⁹ Consider need to “declare” acts or omissions as result of such non-compliance invalid.

Regulations

- 41.(1) The Minister may make regulations regarding—
- (a) any matter required or permitted by this Act to be prescribed;
 - (b) any matter referred to in section 6(1), including, but not limited to—
 - (i) the allocation, transfer and abolition of functions in terms of section 14(1) and the staff performing such functions;
 - (ii) the restructuring or rationalisation of public administration institutions;
 - (iii) employment additional to the establishment;
 - (i) the appointment of unpaid voluntary workers who are not employees and their functions;
 - (ii) the co-ordination of work involving two or more public administration institutions in the same sphere of government;
 - (iii) a code of conduct for employees;
 - (iv) the disclosure of financial interests by all employees or particular categories of employees and the monitoring of such interests;
 - (v) the position of employees not absorbed into a post upon its re-grading;
 - (vi) unauthorised or wrongly granted remuneration and other benefits to employees;
 - (vii) grievances of employees;⁴⁰
 - (c) the designation of one or more particular categories of employees to regulate one or more employment related matters differently from other employees or categories of employees;
 - (d) the reporting on and assessment of compliance with this Act and the review for appropriateness and effectiveness of any regulations, determinations and directives made under this Act;
 - (e) the designation or establishment of one or more authorities vested with the power to authorise a deviation from any regulation in respect of an employee or class of employees under stated circumstances, including the power to authorise such deviation with retrospective effect, but only if in the public interest and not to the detriment of any employee; and

⁴⁰ See current section 35 of the current Public Service Act. Alternatively could be included in the Public Service Commission Act.

- (f) in general, regarding any matter necessary to regulate in order to achieve the objects of this Act or to promote any value or principle listed in section 195(1) of the Constitution in the Public Administration.
- (2) Different regulations may be made to suit the varying requirements of particular public administration institutions or divisions thereof, or of particular categories of public administration institutions, or of particular categories of employees, or of particular kinds of employment in the Public Administration.
- (3) The Minister may issue directives which are not inconsistent with this Act to elucidate or supplement any regulation.

Public Administration Handbooks

42. To enhance ease of use and understanding, the Minister may according to the subject-matter make available in one or more appropriate forms compilations of provisions of this Act and regulations, determinations and directives, made in terms of this Act.

Delegation

- 43.(1)(a)** The Minister,⁴¹ Minister responsible for local government or the Minister responsible for national financial matters may—
- (i) delegate to the head of a department in the Minister's portfolio any power conferred on the Minister by this Act, except the power to make regulations in terms of section 41; or
 - (ii) authorise that head to perform any duty imposed on the Minister by this Act.
- (b) The head of department referred to in subsection (1) may—
- (i) delegate to any employee of his or her department any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (2)(a) Subject to subsection (3)(b), the Premier of a province may—

⁴¹ Provide for delegation of MPSA's powers in respect of LG matters to the MPLG or EAs in general?

- (i) delegate to the head of the Office of the Premier in the province any power conferred on the Premier by this Act; or
- (ii) authorise that head to perform any duty imposed on the Premier by this Act.
- (b) The head of the Office of a Premier may—
 - (i) delegate to any employee in that Office any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (3) The executive authority referred to in section 16(1) may, in the case of—
 - (a) the President, delegate to the Deputy President or a Minister any power conferred on the President by section 16; or
 - (b) the Premier of a province, authorise a Member of the relevant Executive Council to perform any duty imposed on the Premier by section 16.
- (4) Subject to subsection (3), an executive authority may—
 - (a) delegate to the head of a public administration institution any power conferred on the executive authority by this Act; or
 - (b) authorise that head to perform any duty imposed on the executive authority by this Act.
- (5) The head of a public administration institution or other functionary may—
 - (a) delegate to any employee of the public administration institution any power—
 - (i) conferred on that head by this Act;
 - (ii) delegated to that head in terms of subsection (4); or
 - (iii) in the case of a government agency, assigned or delegated to that head in terms of section 13(3) or (4); or
 - (b) authorise that employee to perform any duty—
 - (i) imposed on that head by this Act;
 - (ii) that head is authorised to perform in terms of subsection (4); or
 - (iii) in the case of a government agency, assigned or delegated to the head in terms of section 13(3) or (4).⁴²
- (6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section, must exercise that power or perform that

⁴² Include/exclude delegations for municipalities regarding appointments made by Council?

duty subject to the conditions the person who made the delegation or granted the authorisation considers appropriate.

(7) Any delegation of a power or authorisation to perform a duty in terms of this section—

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (c) may at any time be withdrawn in writing by that person.

Repeal and amendment of laws and transitional arrangements⁴³

44.(1) The laws mentioned in Part A of Schedule 3 are hereby repealed⁴⁴ or amended to the extent indicated in the third column thereof.

(2) The saving and transitional arrangements for any provision so repealed or amended are as set out in Part B of Schedule 3.

Short title and commencement

⁴³ **NB Required repeals and amendments to other legislation, only insofar as they are in conflict with this Bill, and the required savings and transitional arrangements, is being drafted. See footnote 53 for an indication of these.**

⁴⁴ A. Repeal: e.g. whole of the Public Service Act, 1994.

B. Amendment/repeal of provisions of Acts conflicting, or to be aligned, with this Bill, e.g:

- (a) Municipal Systems Act 117 of 1998:
 - (i) To align with service plans (cl 4 of the Bill): amend def. of “integrated development plan” in s1 & s83(3) & s84(1);
 - (ii) To align with HR arrangements in the Bill: s82 (municipal managers) & s84(3)(b)(i) (transfer of staff).
- (b) Municipal Systems Act 32 of 2000:
 - (i) To align with service plans (cl 4 of the Bill): amend def. of “integrated development plan” in s1, s6(2)(e); s11(3(a); and Ch 5;
 - (ii) To align with organisational & HR arrangements in the Bill: amend def. of “staff” in s1; s38-49; s66-72 and Schedule 2; and
 - (iii) Municipalities entities: If government agency model is opted for instead of municipal entities, then Ch 8A will have to be amended, as well as the Municipal Finance Management Act 56 of 2003.
- (c) State Information Technology Agency Act 88 of 1998, to deal with municipalities similar to national & provincial departments, i.e. compel it to use SITA as provider for certain ICT goods and services and use SITA as procurement agent for all other ICT goods and services? Opinion requested on its constitutionality.
- (d) Labour Relations Act 66 of 1995 – def of “public service”(?) and s35-38 - certain amendments already included in Schedule 3;
- (e) **Flagged: GEPF law – amend to cover all municipal employees appointed on and after commencement date, e.g. 1 April 2009?**

45.(1) This Act is called the Public Administration Management Act, 200..., and takes effect on a date determined by the President by proclamation in the *Gazette*.

- (2) Different dates may be so determined in respect of-
 - (a) different provisions of this Act;
 - (b) different categories of employees;
 - (c) different categories of public administration institutions.

Schedule 1⁴⁵

Public Administration Institutions in National and Provincial Spheres

Part A – National Departments

Part B – Offices of Premier

Part C – Provincial Departments

Schedule 2⁴⁶

Part A – National Government Agencies

Part B – Provincial Government Agencies

Part C – Municipal Government Agencies

Schedule 3⁴⁷

Part A – Laws repealed or amended

Substitution of sections 35 to 38 of Act 66 of 1995, as amended by sections 8 and 9 of Act 42 of 1996 and sections 8 and 9 of Act 12 of 2002

1. The following sections are hereby substituted for sections 35 to 38 of the Labour Relations Act, 1995:

“Bargaining councils in public [service] administration

35. There will be a bargaining council for—

⁴⁵ Not included now to limit length of document.

⁴⁶ Not included now to limit length of document.

⁴⁷ See footnotes in respect of cl 44.

- (a) the public **[service]** administration as a whole, to be known as the Public **[Service]** Administration Co-ordinating Bargaining Council; and
- (b) any sector within the public **[service]** administration that may be designated in terms of section 37.

Public **[Service] Administration Co-ordinating Bargaining Council**

36.(1) The Public **[Service]** Administration Co-ordinating Bargaining Council **[must be]** established in accordance with Schedule 1, is to be known and continue as the Public Administration Co-ordinating Bargaining Council.

(2) The Public **[Service]** Administration Co-ordinating Bargaining Council may perform all the functions of a bargaining council in respect of those matters that—

- (a) are regulated by uniform rules, norms and standards that apply across the public **[service]** administration; or
- (b) apply to terms and conditions of service that apply to two or more sectors; or
- (c) are assigned to the State as employer in respect of the public **[service]** administration which are not assigned to the State as employer in any sector.

Bargaining councils in sectors in public **[service] administration**

37.(1) The Public **[Service]** Administration Co-ordinating Bargaining Council may, in terms of its constitution and by resolution—

- (a) designate a sector of the public **[service]** administration for the establishment of a bargaining council; and
- (b) vary the designation of, amalgamate or disestablish bargaining councils so established.

(2) A bargaining council for a sector designated in terms of subsection (1)(a) must be established in terms of the constitution of the Public **[Service]** Administration Co-ordinating Bargaining Council.

(3) If the parties in the sector cannot agree to a constitution for the bargaining council for a sector designated in terms of subsection (1)(a), the Registrar must determine its constitution.

(4) The relevant resolution made in terms of subsection (1) must accompany any application to register or vary the registration of a bargaining council or to register an amalgamated bargaining council.

(5) A bargaining council established in terms of subsection (2) has exclusive jurisdiction in respect of matters that are specific to that sector and in respect of which the State as employer in that sector, has the requisite authority to conclude collective agreements and resolve labour disputes.

Disputes between bargaining councils in public [service] administration

38.(1) If there is a jurisdictional dispute between two or more bargaining councils in the public [service] administration, including the Public [Service] Administration Co-ordinating Bargaining Council, any party to the dispute may refer the dispute in writing to the Commission.

(2) The party who refers the dispute to the Commission must satisfy the Commission that a copy of the referral has been served on all other bargaining councils that are parties to the dispute.

(3) The Commission must attempt to resolve the dispute as soon as possible through conciliation.

(4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration by the Commission.”.

[NB (1) Provide that current sectoral bargaining councils are regarded as having been established

(2) Include provision that the bargaining council established for municipalities is deemed to a be bargaining council for a sector established in terms of section 37(2) and provide for continued validity of collective agreements.

(3) Also provide that organised local government is to act on behalf of municipalities in that council.]

Amendment of section 213 of Act 66 of 1995, as amended by section 52 of Act 42 of 1996 and section 54 of Act 12 of 2002

2. Section 213 of the Labour Relations Act, 1995, is hereby amended by the substitution for the definition of “public service” of the following definition:

“**public administration**’ means the public administration institutions mentioned in section 2(1) of the Public Administration Management Act, 200..., but excluding—

- (a) the Regular Force of the South African National Defence Force;
- (b) the National Intelligence Agency;
- (c) the South African National Academy of Intelligence; and
- (c) the South African Secret Service.”.

[NB A number of other consequential amendments to LRA would be required (e.g. replace term “public service” - e.g. in s197)]

Part B – Saving and transitional arrangements⁴⁸

⁴⁸ E.g. contracts and other conditions of service of current employees.